

Assembly Bill No. 2388

Passed the Assembly August 22, 2012

Chief Clerk of the Assembly

Passed the Senate August 20, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

Second enrollment

CHAPTER _____

An act to amend Section 35159 of the Public Resources Code, relating to the Santa Clara County Open-Space Authority.

LEGISLATIVE COUNSEL'S DIGEST

AB 2388, Beall. Santa Clara County Open-Space Authority: authorization to contract.

(1) The Santa Clara County Open-Space Authority Act establishes procedures for the creation of the Santa Clara County Open-Space Authority, and prescribes the functions and duties of the authority with regard to the management of lands and facilities under the jurisdiction of the authority. The act authorizes the authority to contract with any person or public agency for any services, supplies, equipment, or materials, or for the construction or completion of any building, structure, or improvement. The act requires that a contract for any services, supplies, equipment, or materials, with the exception of certain legal appraisal services, that exceeds \$10,000 be contracted for and let to the lowest responsible bidder, but authorizes the governing board of the authority, if 2 or more bids are the same and the lowest, to accept the one it chooses. The act permits contracts of \$50,000 or less to be let by informal bidding procedures, but requires contracts of more than \$50,000 to be let by formal bidding procedures.

This bill would instead require that a contract for any supplies, equipment, or materials, that exceeds \$25,000 be contracted for and let to the lowest responsible bidder but would authorize the governing board of the authority, if 2 or more bids are the same and lowest, to accept the one it chooses. The bill would further permit contracts of \$75,000 or less to be let by informal bidding procedures, but would require that contracts of more than \$75,000 be let by formal bidding procedures. The bill would specify that those requirements do not apply to contracts for services, including, but not limited to, planning, consulting, legal, or appraisal services, or to contracts for services authorized to be procured pursuant to specified provisions with private architects, engineering, land surveying, and construction project management firms, if the

governing board awards the contract to the most responsible and qualified bidder, as defined.

(2) The bill would declare that, due to the unique circumstances applicable only to the Santa Clara County Open-Space Authority that the bill is intended to address, a general statute within the meaning of specified provisions of the Constitution cannot be made applicable and a special statute is necessary.

The people of the State of California do enact as follows:

SECTION 1. Section 35159 of the Public Resources Code is amended to read:

35159. (a) The governing board may contract with any person or public agency for any services, supplies, equipment, or materials, or for the construction or completion of any building, structure, or improvement.

(b) (1) Notwithstanding any other laws, a contract for any supplies, equipment, or materials, that exceeds twenty-five thousand dollars (\$25,000) shall be contracted for and let to the lowest responsible bidder. If two or more bids are the same and the lowest, the governing board may accept the one it chooses. A contract of seventy-five thousand dollars (\$75,000) or less may be let by informal bidding procedures, but a contract of more than seventy-five thousand dollars (\$75,000) shall be let by formal bidding procedures.

(2) (A) This subdivision shall not apply to contracts for services, including, but not limited to, planning, consulting, legal, or appraisal services, or to contracts for services authorized to be procured pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, if the governing board awards the contract to the most responsible and qualified bidder.

(B) For purposes of this subdivision, “most responsible and qualified bidder” means the bidder deemed by the governing board that best fits the needs of the service contract or meets the criteria prescribed in subparagraph (C).

(C) In determining the most responsible and qualified bidder, the governing board may use criteria, including, but not limited to, all of the following:

(i) Experience of the bidder as a firm, including past performance of the firm on contracts of similar size and scope.

(ii) Experience and qualifications of personnel employed by the bidder.

(iii) Demonstrated understanding of the scope of the service, including schedule and plan to accomplish the service.

(iv) Best overall financial return to the governing board on the contract.

(v) In addition, for purposes of this paragraph, a responsible bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, and experience to satisfactorily perform the work or provide the goods required.

(c) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. For purposes of contracts requiring formal bidding, notice shall be published at least twice, at least five days apart, in a newspaper of general circulation in the authority, or if there is none, it shall be posted in at least three public places in the authority. The notice shall distinctly state the nature of the contract.

(d) The governing board may reject any bids. If the governing board rejects all bids, it may either readvertise or adopt a resolution, by four-fifths vote, declaring that the contract can be performed more economically by the employees of the authority or obtained at a lower price on the open market. Upon adoption of the resolution, the governing board may undertake the project without further complying with subdivisions (b) and (c).

(e) If bids are not received, the governing board may undertake the project without further complying with subdivisions (b) to (d), inclusive.

(f) In the case of an emergency, the governing board may adopt a resolution by a two-thirds vote of all the members of the governing board declaring that the public interest and necessity demand immediate expenditure of public money to safeguard life, health, or property. The governing board may expend any sum required in the emergency without submitting the expenditure to bid.

For the purpose of this subdivision, “emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss

of, or damage to, life, health, property, or essential public services. Emergency includes a fire, flood, earthquake, or other soil or geologic movements, as well as a riot, accident, or sabotage.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable only to the Santa Clara County Open-Space Authority, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, therefore, this special statute is necessary.

Approved _____, 2012

Governor